



**US Army Corps
of Engineers.**

Nashville District

Public Notice

Public Notice #08-72

Date: November 10, 2008

Application #2006-02131

Expires: December 9, 2008

Please address all comments to:

Nashville District Corps of Engineers, Regulatory Branch
(Attention: Marty Tyree)
3701 Bell Road, Nashville, TN 37214

JOINT PUBLIC NOTICE
US ARMY CORPS OF ENGINEERS
AND
COMMONWEALTH OF KENTUCKY

SUBJECT: Proposed Discharge of Fill Material Associated with Permanent Stream Relocation and Coal Mining in Letcher County, Kentucky - Kentucky Department for Natural Resources (KDNR) #867-9004, Amendment No. 1, Phase 2 Area, Eolia, Letcher County, KY

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army (DA) Permit pursuant to **Section 404 of the Clean Water Act** (CWA) (33 U.S.C 1344). Before a permit can be issued, certification must be provided by the KDNR, pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards would not be violated. By copy of this notice, the applicant hereby applies for the required certification.

APPLICANT: **Cumberland River Coal Company**
 P.O. Drawer 109
 Appalachia, KY 24216

LOCATION: The proposed permit area is located approximately 1.5 Miles southwest of Oven Fork and 0.2 miles southeast of Poor Fork of the Cumberland River in Letcher County, Kentucky. The site is on the Whitesburg, KY 7.5 Minutes Quadrangle May at Latitude 37° 02' 51.2" North, Longitude 81° 49' 3.17" West.

DESCRIPTION: Cumberland River Coal Company, (CRCC), has obtained approval from the KDNR for a Surface Mining Control and Reclamation Act (SMCRA) permit to conduct surface and auger/highwall coal mining activities at the above location. The KDNR permit Phase 2 area encompasses 55.81 surface acres.

CRCC has applied for a DA permit to permanently relocate approximately 1,962 linear feet of Brown Branch in order to perform mining activities in advance of activities proposed by the Kentucky Transportation Cabinet (KTC), thereby avoiding sterilization of coal reserves located below drainage in Brown Branch. Prior to the relocation, an existing impoundment along the upper reach of Brown Branch would be drained.

The total length of proposed impacts to Brown Branch is approximately 1,962 linear feet. The total length of proposed stream channel mitigation is 2,382 linear feet. Riparian vegetation would be planted fifty feet from the centerline of the stream along the back-filled side of the constructed stream channel while the other side would already established riparian vegetation due to relocation. The applicant applied the Eastern Kentucky Stream Assessment Protocol to the project to quantify the anticipated impacts and the proposed mitigation effort.

General plans of the proposed work and mitigation are attached. Additional plans and information, including the mitigation proposal and documentation provided in support of the permit application, are available for viewing at the Nashville District's Regulatory Office.

The permit decision will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

An Environmental Assessment will be prepared by this office prior to a final decision concerning issuance or denial of the requested Department of the Army Permit.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. A copy of this notice is being sent to the office of the state historic preservation officer.

Based on available information, the proposed work would not destroy or endanger any federally listed threatened or endangered species or their critical habitats, as identified Under the Endangered Species Act. Therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service (USFWS) is not planned at this time. A copy of this notice is being furnished to the USFWS. The USFWS is requested to review the project as currently proposed and comment concerning any likely effect to any threatened or endangered species or their critical habitat.

Other federal, state, and/or local approvals required for the work are as follows:

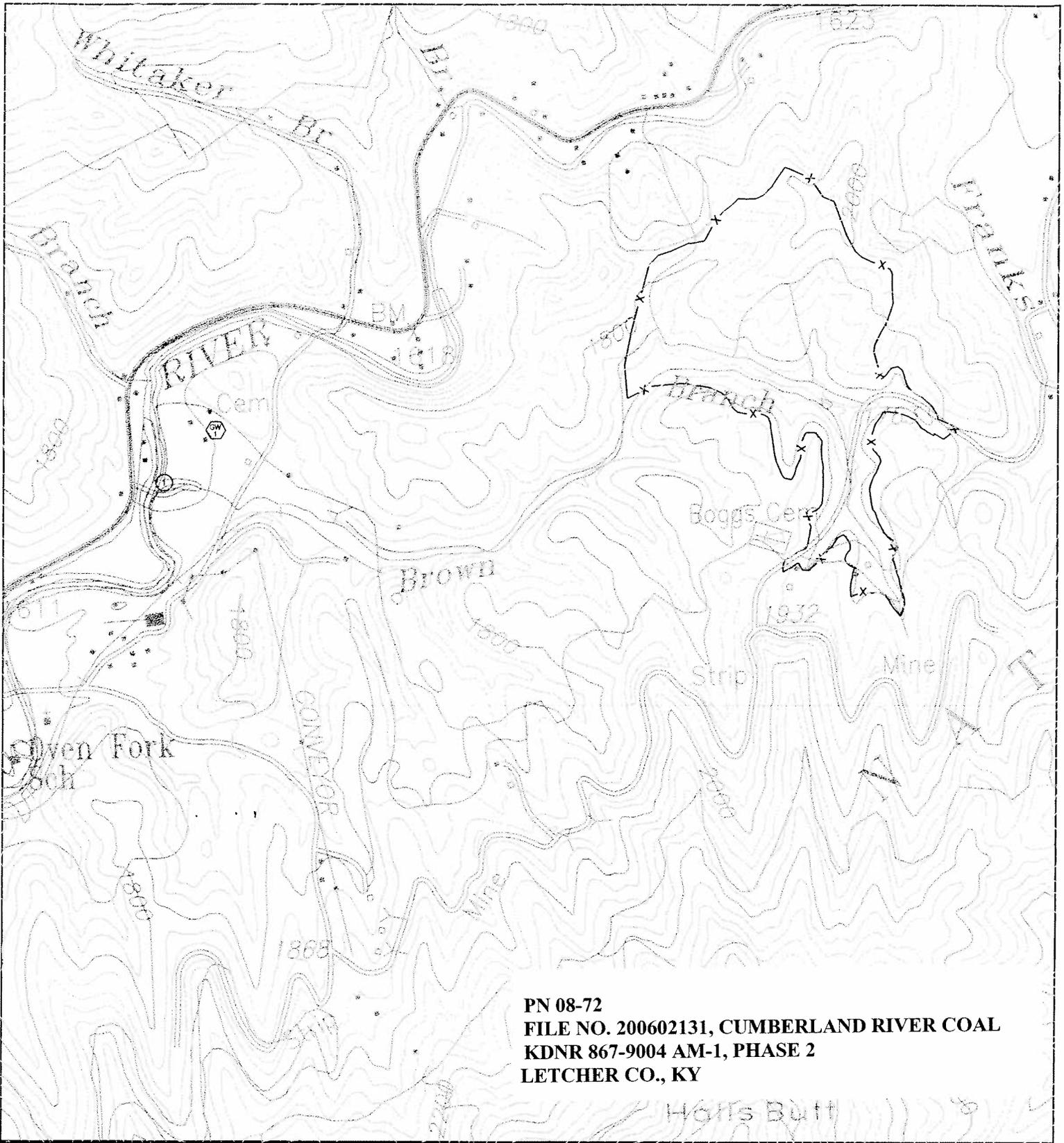
- a. Water quality certification from the KDNR in accordance with Section 401(a)(1) of the CWA.
- b. A Surface Mining and Reclamation Act (SMCRA) permit from the KDNR

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Written statements received on or before December 9, 2008, will become a part of the record and will be considered in the determination.

Any response to this notice should be directed to the Regulatory Branch, Attention: Marty Tyree, at the above address or (615) 369-7514.

If you received this notice by mail and wish to view all of the diagrams, visit our web site at:
<http://www.lrn.usace.army.mil/cof/notices.htm>.



PN 08-72
 FILE NO. 200602131, CUMBERLAND RIVER COAL
 KDNR 867-9004 AM-1, PHASE 2
 LETCHER CO., KY

**Brown Branch Surface Mine, KDNR Permit Number 867-9004, Amendment No. 1
 Water Resources**

This Project Only Involves Phase 2, Increments 3 & 4

Cumberland River Coal Company
 Brown Branch
 Surface Mine
 P.O. Box 109
 Appalachia, Virginia 24216

-  Project Area (Phase 2)
-  Ground Water Monitoring Stations
-  Surface Water Monitoring Stations



EXHIBIT 9



~~Proposed Alternative Summary~~

Size of the project area (Phase 2) (acres)	55.81 Surface mining, 21.2 Auger/highwall mining
Seams to be mined	Kelly, Imboden
Number of new fills	0
Disturbed acreage within jurisdictional area	Mine-Through with permanent stream relocation, 0.179 Acres
Wetland Impacts	0.35 Acres ¹
Stream Impacts (Temporary ²)	1,962 linear ft. of Brown Branch
Drainage Control Structures	1 permanent diversion of Brown Branch, DD-1.
Direct Jobs	103
Recoverable Tons of Coal	Approximately 0.82 million

¹ Four areas identified as federally regulated wetlands during field inspections by the KTC fall within the footprint area for Waste Area #4. Mitigation is to be provided by debiting an existing KTC mitigation bank.

²Temporary is defined in this section as the duration of time through final bond release (life of-mine plus five years). A breakdown of temporary impacts and an explanation of pond reclamation are provided in Section 3.11, Water Quality.

Table 8 - Permanent Impacts - Ecological Integrity Index Inventory

Location	Affected Segment Length	Segment Classification ¹	Ecological Integrity Index (EII)
11A	1,158'	P	0.30
11B	407'	P	0.28
11C	397'	P	0.24
TOTAL	1,962'		

¹ P = Perennial.

**Table 21
Estimated Ecological Integrity Index Inventory for Mitigation Provided**

Location	Mitigated Segment Length	Habitat Score	Segment Classification ¹	Ecological Integrity Index (EII)
DD-1	2,382	171	P	0.55

¹ E = Ephemeral; I = Intermittent; and P = Perennial.